

**Sheth, Gary**

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**From:** Sheth, Gary  
**Sent:** Monday, July 9, 2018 1:01 PM  
**To:** John Barth  
**Cc:** Hagler, Tom; Smith, DavidW  
**Subject:** RE: Four Corners NPDES permit  
**Attachments:** APSFCPPGSMemo07-20-17.pdf

Mr. Barth,

See attached Memo dated 07-20-17

Thanks,

Gary Sheth  
NPDES Permits Section (WTR-2-3)  
Water Division  
USEPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
Tel: 415.972.3516  
Fax: 415.947.3549

**From:** John Barth [mailto:barthlawoffice@gmail.com]  
**Sent:** Friday, July 6, 2018 8:52 AM  
**To:** Sheth, Gary <Sheth.Gary@epa.gov>  
**Subject:** Re: Four Corners NPDES permit

Mr. Sheth

Please also send me the "Memorandum from Gary Sheth to File dated July 20, 2017" referenced on p. 15, Response 10 of EPA's Reponse to Comments on the Four Corners Power Plant NPDES permit. Thank you.

John Barth

On Tue, Jul 3, 2018 at 9:26 AM, Sheth, Gary <[Sheth.Gary@epa.gov](mailto:Sheth.Gary@epa.gov)> wrote:

Mr. Barth,

See attached documents responsive to requested items. 1. Through 4. I will need to search historic or archived records to respond to item 5. and will get back to you.

Thanks,

Gary Sheth

NPDES Permits Section (WTR-2-3)

Water Division

USEPA Region 9

75 Hawthorne Street

San Francisco, CA 94105

Tel: 415.972.3516

Fax: 415.947.3549

**From:** John Barth [mailto:[barthlawoffice@gmail.com](mailto:barthlawoffice@gmail.com)]

**Sent:** Monday, July 2, 2018 10:57 AM

**To:** Sheth, Gary <[Sheth.Gary@epa.gov](mailto:Sheth.Gary@epa.gov)>

**Cc:** Andrew Hawley <[hawley@westernlaw.org](mailto:hawley@westernlaw.org)>; Michael Saul <[msaul@biologicaldiversity.org](mailto:msaul@biologicaldiversity.org)>

**Subject:** Four Corners NPDES permit

Mr. Sheth

On behalf of the conservation organizations commenting on this permit, I am writing to request copies of documents referred to in your Response to Comments on the Four Corners Power Plant NPDES renewal permit (NN0000019) issued on June 12, 2018. Please provide the following documents:

1. Navajo Nation letter to Wayne Nastri, EPA dated Oct 31, 2005.

2. Decision Document: Approval of the Navajo Nation Application for Treatment in the same manner as a State for Sections 303(c) and 401 of the CWA, January 20, 2006.

3. EPA letter approving Navajo Nation Water Quality standards dated March 26, 2009

4. The email exchange dated May 29-30, 2018 waiving 401 certification requirements.

5. Copies of the previous NPDES permits (other than the 2001 permit) for the Four Corners Power Plant.

Time of the essence. Please provide these documents well before the deadline for appeal before the Environmental Appeals Board. Thank you,

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John Barth  
Attorney at Law  
P.O. Box 409  
Hygiene, CO 80533  
(303) 774-8868  
[barthlawoffice@gmail.com](mailto:barthlawoffice@gmail.com)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

MEMORANDUM

DATE: July 20, 2017

SUBJECT: Morgan Lake Status

FROM: Gary Sheth

TO: Administrative Record for NPDES Permit NN0000019 and NPDES Permit NN0028193

**Background**

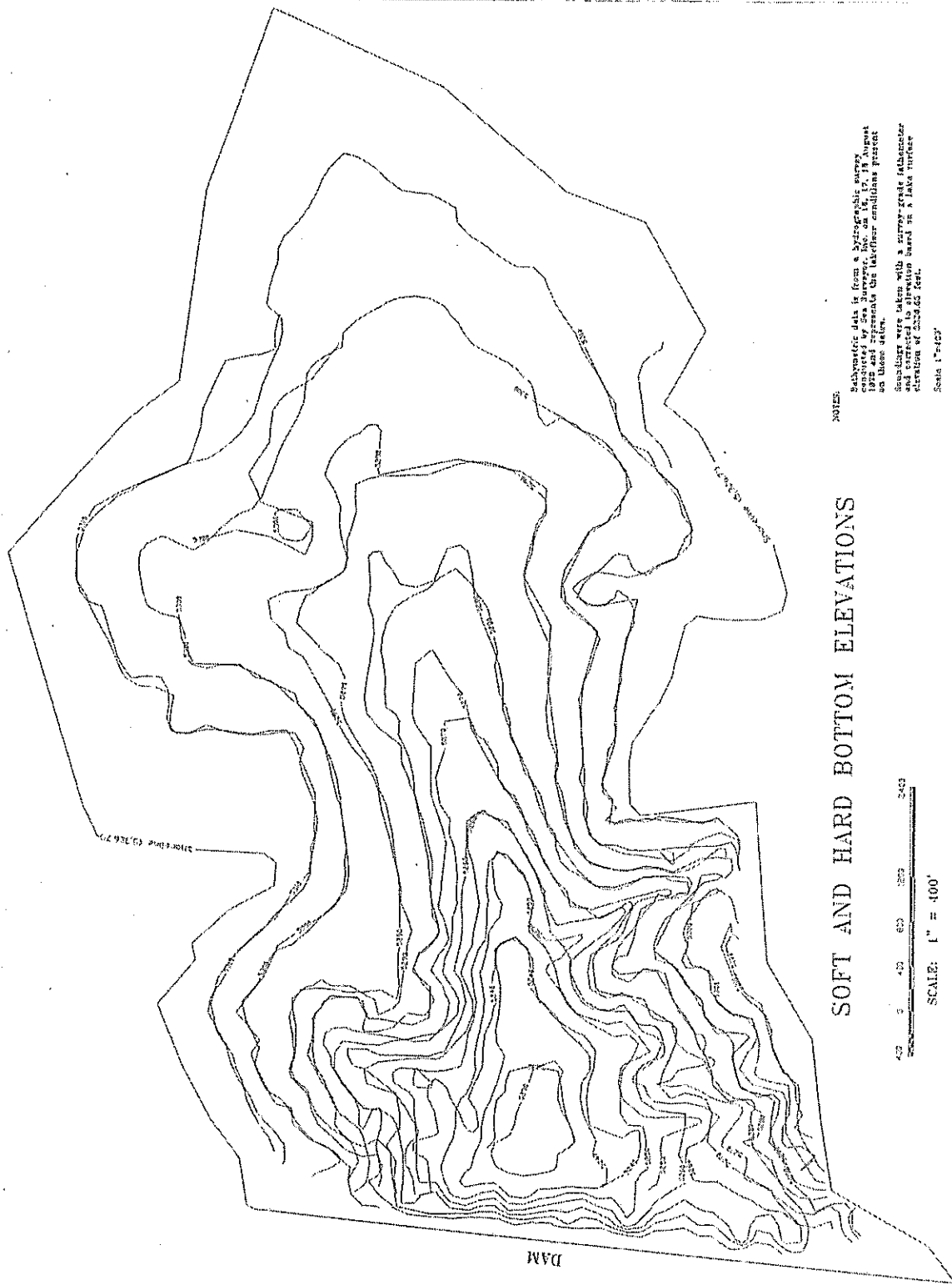
The current Arizona Public Service Company (APS) NPDES permit for the Four Corners Power Plant (NN0000019) permit and the current Navajo Transitional Energy Company (NTEC) NPDES permit for the Navajo Mine (NN0028193) expired in April 2006 and April 2013 respectively. With timely submittal of permit renewal applications both permits are currently administratively extended and draft permits were public noticed in December 2014 and August 2015 respectively. The final renewal permits are yet to be issued. Both facilities discharge into Morgan Lake, a cooling lake adjacent to the power plant and the mine. The current Power Plant permit imposes limits at the outfall from Morgan Lake, while the current Navajo Mine permit imposes limits an outfall into Morgan Lake. This has caused some confusion as to the status of Morgan Lake and whether it should be considered a Water of the United States.

**Review and Conclusion**

On or about March 17, 2017 in response to a request by EPA, APS provided several topographical maps of the area containing Morgan Lake and the downgradient zone extending to the Chaco Wash. APS also provided four photographs of the area that now contains Morgan Lake, which were taken during construction of the dam and the lake. Based on the topographic maps, as well as the photographs submitted it appears that Morgan Lake is a man-made water body constructed wholly in upland areas, and which did not impound any existing Water of the United States. Therefore, Morgan Lake should not be considered a Water of the United States.

WLD 107A 1143-5  
No. 12424 153.87





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| Arizona Public Service Co.<br>Fruitland, New Mexico | KEY:<br>— Soft Bottom Contour Lines<br>— Hard Bottom Contour Lines | <b>LAKE MORGAN, NEW MEXICO</b><br>Four Corners Steam Electric Station | <b>Sea Surveyor, Inc.</b><br>Providing Marine Surveying<br>for the Engineering Community<br>4576 East Second Street, Ste. G<br>Benicia, CA 94510 (707) 748-1853 |
|---|--|---|---|

APS DWG. NO.: FC-C-17-PSG-100003-62



TOPOGRAPHIC MAP  
 AND TOWN/SETTLATION POINT AREAS  
 POOR COMMUNICATIONS STATION  
 PUBLISHED BY THE  
 NATIONAL PUBLIC SERVICE COMPANY  
 1954

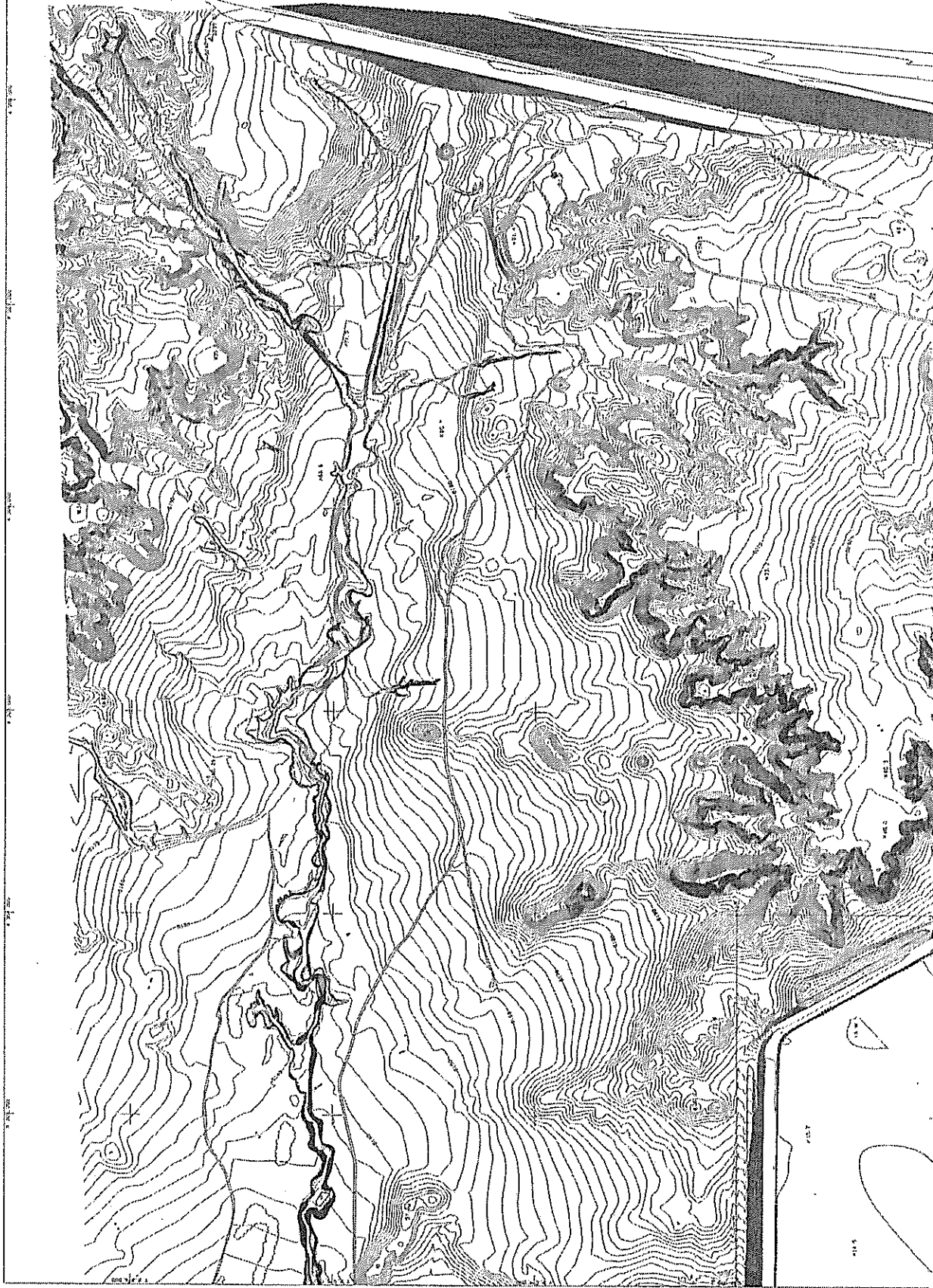
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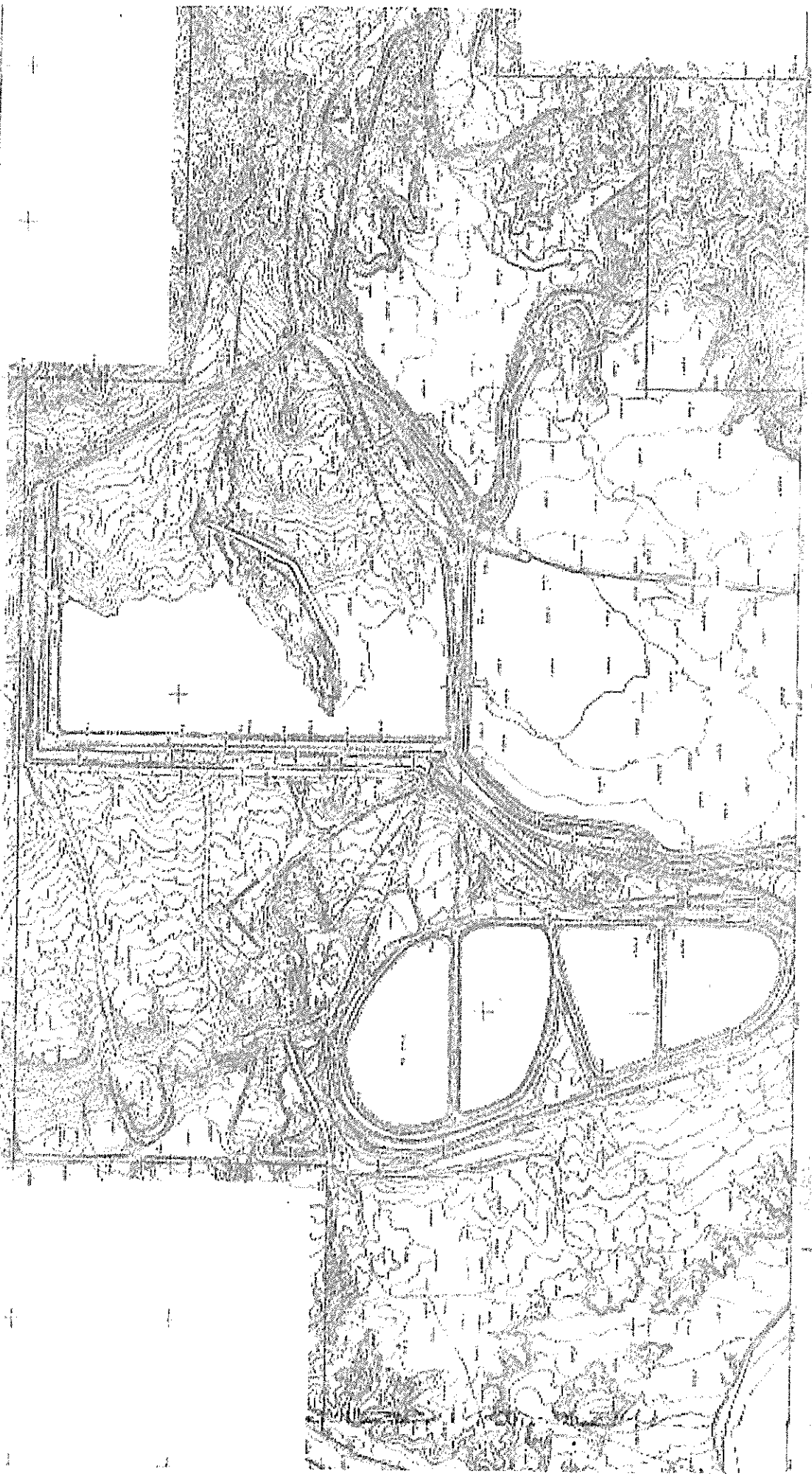
APR 20/54 VOL. 100-100000-54

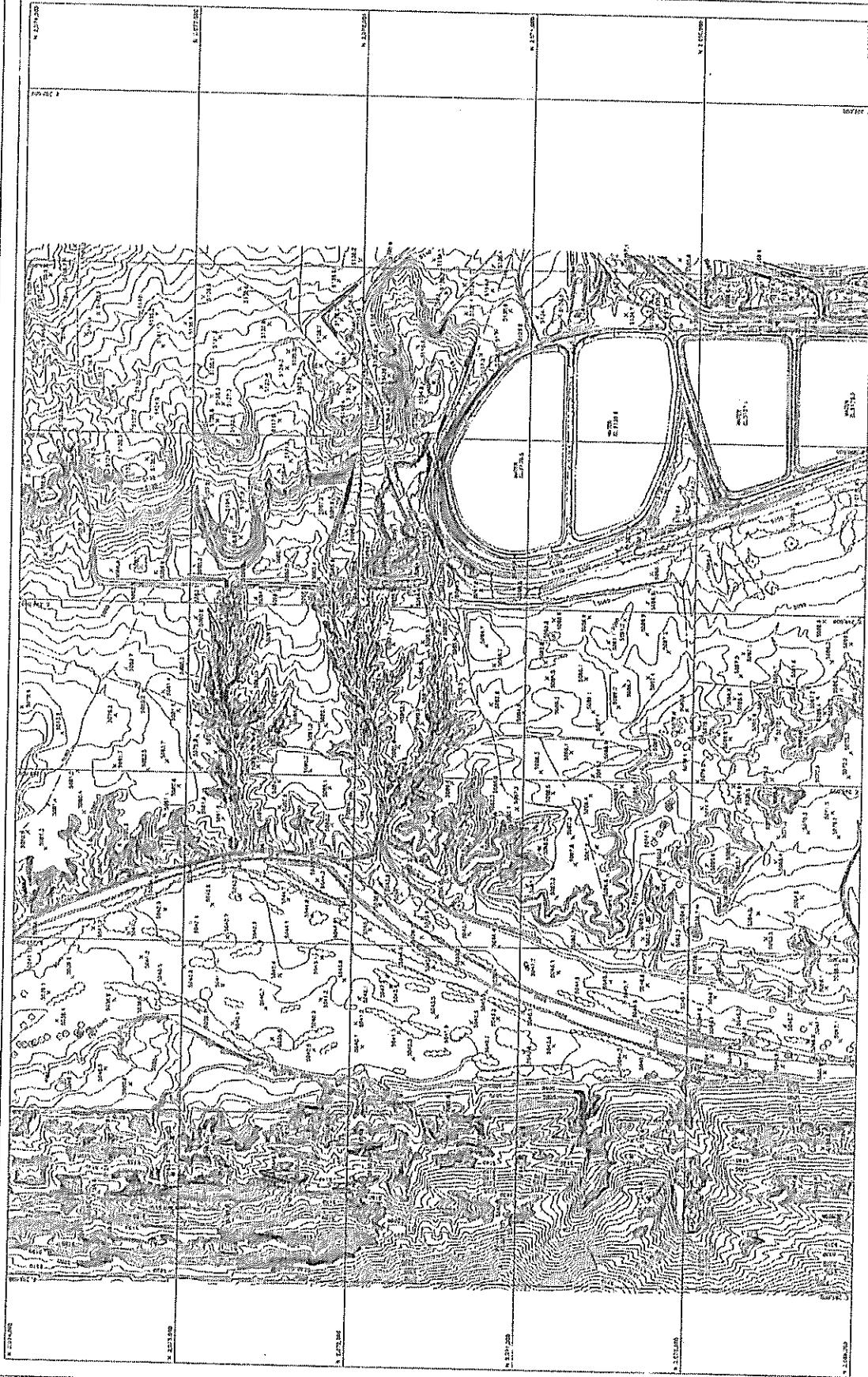


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TOPOGRAPHIC MAP  
OF  
FOUR CORNERS STEAM ELECTRIC STATION  
PREPARED FOR  
ARIZONA PUBLIC SERVICE

APS DWG. NO. 1 FCC-47-950-10000-27

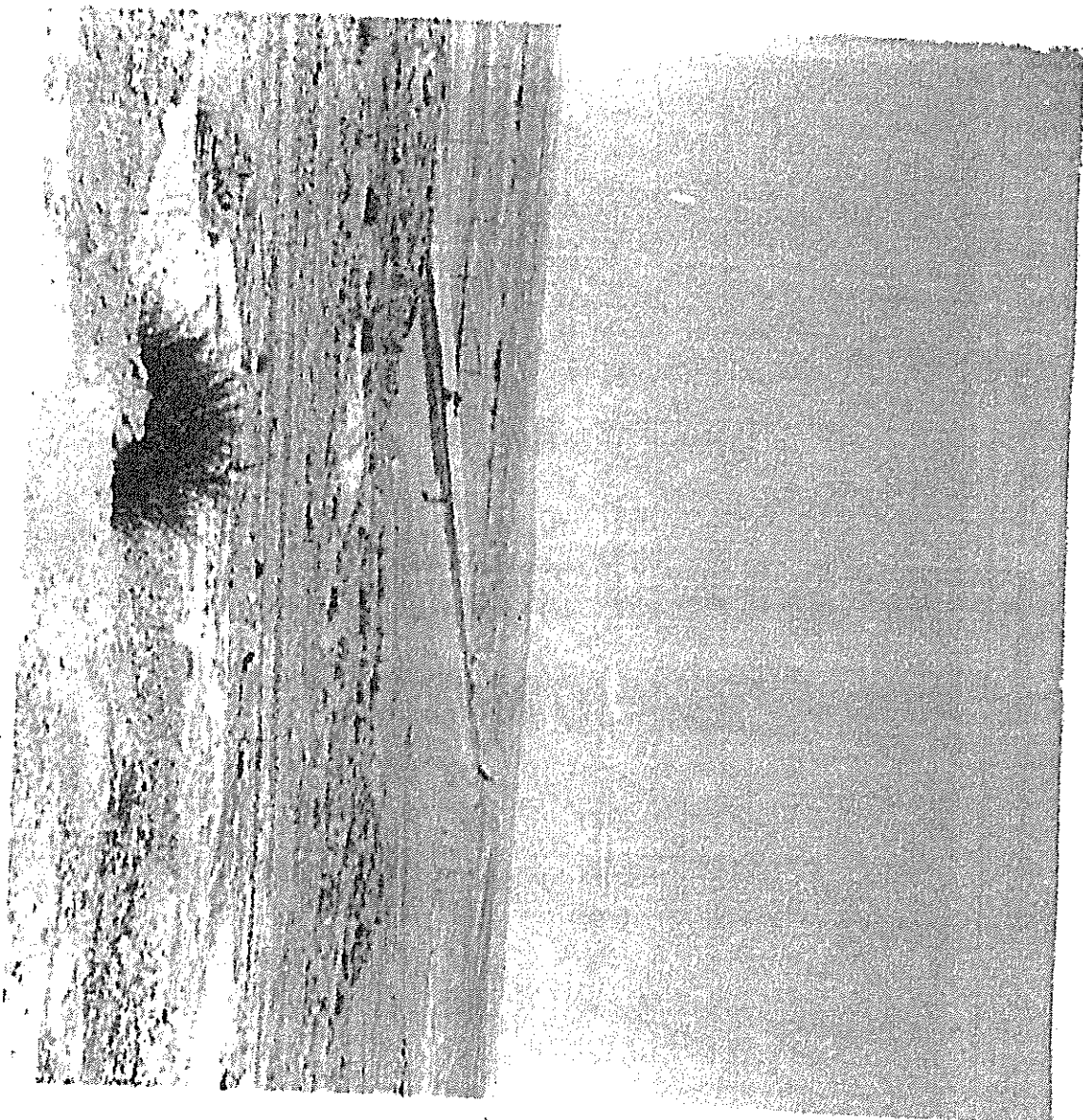


Excavation for Morgan Lake Dam. To the right of the cut (East) will become Morgan Lake. 5/17/61



Construction of cooling water discharge canal. To the left (North) will become Morgan Lake. 8/10/61





Morgan Lake Dam 73 % complete  
viewed from high point. To the  
right (East) will become Morgan  
Lake. 8/30/51



Morgan Lake Dam 80 % complete. Left part of photo (East) will become Morgan Lake. Small pond at lower left center is likely a stock tank constructed to catch rain water for stock watering. 9/14/61